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OFFICE OF PETITIONS

In re Patent of Doyle et al. : DECISION ON REQUEST
Patent No. 7,575,744 : FOR RECONSIDERATION OF
Issue Date: August 18, 2009 : PATENT TERM ADJUSTMENT
Application No. 10/535,357 : AND NOTICE OF INTENT TO
371 Completion date: May 25, 2005 : ISSUE CERTIFICATE OF
Attorney Docket No. 31725-77991 : CORRECTION

This is a decision on the petition filed on September 30, 2009, which is being treated as a petition under 37 C.F.R. § 1.705(d) requesting that the patent term adjustment indicated on the patent be corrected to indicate the term of the above-identified patent is extended or adjusted by six hundred eighty-one (681) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by six hundred eighty-one (681) days is **GRANTED** to the extent indicated herein.

Delay under 37 C.F.R. § 1.703(b)

The petition indicates the filing date of the application is May 18, 2005, and the date three years after the filing date of the application is May 18, 2008. The petition asserts the period of delay under 37 C.F.R. § 1.703(b) is 457 days, which is the number of days beginning on May 19, 2008, and ending on August 18, 2009, the date the patent issued.

The period of delay under 37 C.F.R. § 1.703(b) is 450 days, not 457 days, because the period of delay began on the day after the date three years after May 25, 2005, not May 18, 2005.

The period of delay under 37 C.F.R. § 1.703(b) begins on the day after the date three years after the *date of commencement* under 35 U.S.C. 371(b) or (f) for the national stage of an international application. Although application papers were filed on May 18, 2005, the date of commencement under 35 U.S.C. 371(b) or (f) is May 25, 2005.

In this case, the period of delay under 37 C.F.R. § 1.703(b) is the number of days beginning on May 26, 2008, and ending on August 18, 2009, the date the patent issued. In other words, the period of delay under 37 C.F.R. § 1.703(b) is 450 days, not 457 days as asserted by patentees.

Patentees correctly assert the number of days of overlap between delay under 37 C.F.R. § 1.703(a) and 37 C.F.R. § 1.703(b) is 6 days.

The patent term adjustment should have been increased by 444 days (450 - 6) as a result of B Delay.

Delay under 37 C.F.R. § 1.703(a)

Patentees calculate the alleged correct patent term adjustment using a period of delay of 344 days under 37 C.F.R. § 1.703(a)(1). As a result, patentees are indirectly asserting the period of delay under 37 C.F.R. § 1.703(a)(1) is 344 days, not 337 days.

37 C.F.R. § 1.705(d) states,

Any request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

Patentees could have filed a petition under 37 C.F.R. § 1.705(b) disputing the Office's determination the period of delay under 37 C.F.R. § 1.703(a)(1) is 337 days. Therefore, to the extent the instant petition requests an increase in the delay under 37 C.F.R. § 1.703(a)(1), the request is dismissed as untimely.

Conclusion

The total period of delay under 37 C.F.R. § 1.703(a) is 343 days.

The period of delay under 37 C.F.R. § 1.703(b) is 457 days.

The number of days of overlap between the periods of delay under 37 C.F.R. § 1.703(a) and 37 C.F.R. § 1.703(b) is 6 days.

The period of delay under 37 C.F.R. § 1.704(c) is 120 days.

The patent term adjustment is 667 days which is the sum of 343 days of Office delay under 37 C.F.R. § 1.703(a) and 450 days of delay under 37 C.F.R. § 1.703(b) reduced by 6 days of overlap and 120 days of delay under 37 C.F.R. § 1.704(c).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **six hundred sixty-seven (667) days**.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Anthony Knight
Supervisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,575,744 B2
ISSUE DATE : August 18, 2009
INVENTOR(S) : Doyle et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 330 days.

Delete the phrase "by 330 days" and insert - by 667 days--



US007575744B2

(12) **United States Patent**
Doyle et al.

(10) **Patent No.:** US 7,575,744 B2
(45) **Date of Patent:** Aug. 18, 2009

(54) **COMPOSITION AND METHOD FOR
INHIBITION OF MICROORGANISMS**

(75) Inventors: Michael P. Doyle, Peachtree City, GA (US); Tong Zhao, Peachtree City, GA (US)

(73) Assignee: University of Georgia Research Foundation, Inc., Athens, GA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 330 days.

(21) Appl. No.: 10/535,357

(22) PCT Filed: Nov. 24, 2003

(86) PCT No.: PCT/US03/37526

§ 371 (c)(1),
(2), (4) Date: May 18, 2005

(87) PCT Pub. No.: WO2004/048597

PCT Pub. Date: Jun. 10, 2004

(65) **Prior Publication Data**

US 2006/0073129 A1 Apr. 6, 2006

Related U.S. Application Data

(60) Provisional application No. 60/428,863, filed on Nov. 25, 2002.

(51) **Int. Cl.**
A01N 63/00 (2006.01)
C12N 1/20 (2006.01)
C12P 1/00 (2006.01)
D06M 16/00 (2006.01)

(52) **U.S. Cl.** 424/93.4; 435/252.1; 435/264;
435/267; 435/821; 435/822

(58) **Field of Classification Search** None
See application file for complete search history.

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(57) **ABSTRACT**

A composition and method for the inhibition of microorganisms.

7 Claims, 1 Drawing Sheet